National Steel Corporation *and* United Steel Workers of America, AFL–CIO, Local 67 *and* United Steel Workers of America, AFL–CIO, Local 30.
Cases 14–CA–25957–1 and 14–CA–25957–2

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On November 13, 2000, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

The judge found that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with Locals 67 and 30 (the Unions) over the use of hidden surveillance cameras and by failing to seek an accommodation with the Unions over its confidentiality concerns about the Unions' request for information about the cameras. We agree.

Beginning in 1987, the Respondent periodically has used hidden cameras to investigate specific cases of suspected theft or other instances of wrongdoing. One such investigation occurred in February 1999, when the Respondent installed a camera in a file cabinet in Process Manager Mike Edgar's office in an attempt to discover who was using the office at night when Edgar was not at work. The Respondent eventually identified employee Ronnie Williams, a member of Local 67, as the individual using the office. After determining that Williams had used Edgar's telephone to make numerous personal long-distance calls, the Respondent discharged him. Local 67 subsequently filed a grievance over the termination.

As a result of his participation in the arbitration of Williams' grievance, Local 67 President Donald Ogle became aware of the Board's decision in *Colgate-Palmolive Co.*, 323 NLRB 515 (1997), in which the Board held that the use of hidden surveillance cameras by an employer is a mandatory subject of bargaining.[1] Consequently, at a steering committee meeting on January 5, 2000,[2] Ogle presented the Respondent with a copy of the *Colgate-Palmolive* decision, asked the Respondent for information regarding hidden surveillance cameras, and stated that the Respondent needed to talk to "the Union" before it installed additional cameras. Five days later, Ogle followed up on his request in a letter to the Respondent. He advised the Respondent that "the use of hidden surveillance cameras has been deemed by the National Labor Relations Board as a mandatory subject of bargaining and the Union has not waived its right to bargain over the subject." In addition, the letter requested "all information concerning any existing hidden surveillance cameras that our members are subjected to that exist in any and all areas" of the Respondent's property.[3]

Approximately 1 month later, by letter dated February 28, the Respondent replied to the information request. The letter stated that the Respondent had reviewed "your recent request that we provide you with the location of hidden surveillance cameras," that "disclosing the location of this equipment would defeat its purpose," and that "the Company does not believe that the Union is entitled to this information." On March 6, Local 67 filed charges based upon the Respondent's refusal to bargain over or provide information about the surveillance cameras.

The judge found, and we agree, that under *Colgate-Palmolive* the Respondent has a duty to bargain with the Unions over the use of the cameras, and that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to do so in response to the Unions' request.[4] In *Colgate-Palmolive,* the Board determined that the employer's use of hidden surveillance cameras to investigate workplace theft and employee misconduct was a mandatory subject of bargaining because the "installation of surveillance cameras is both germane to the working environment and outside the scope of managerial decisions lying at the core of entrepreneurial control." 323 NLRB at 515. Although the Respondent argues that the facts in this case require a different result than in *Colgate-Palmolive*, we agree with the judge that *Colgate-Palmolive* is not distinguishable in any material respect. Accordingly, we affirm the judge's conclusion that the Respondent's refusal to bargain over the cameras was unlawful.

We also agree with the judge's finding that the Respondent violated Section 8(a)(5) and (1) by its general

[1] Ogle was unaware of the Respondent's use of the surveillance cameras prior to the discharge of Williams.

[2] All dates hereafter are in 2000 unless otherwise noted.

[3] In addition to Ogle, the letter was signed by representatives of five other unions that represented the Respondent's employees, including Local 30.

[4] We agree with the judge's finding that the Unions requested the Respondent to bargain over the use of hidden cameras. In this regard, we rely on both Ogle's request at the January 5 meeting and his January 10 letter. Contrary to our dissenting colleague, we find that the Respondent's February 28 letter refusing to provide any information regarding the location of hidden cameras was effectively a refusal to bargain.

refusal to provide the Unions with information pertaining to existing hidden surveillance cameras, and by refusing to bargain for an accommodation of the Unions' information request that pertained specifically to the location of hidden cameras and the confidentiality concerns raised by the Respondent as to that issue. With respect to the confidentiality claim, it is well established that an employer may not avoid its obligation to provide a union with requested information that is relevant to bargaining simply by asserting a confidentiality interest in the information. Rather, the employer has the burden to seek an accommodation that will meet the needs of both parties. *Metropolitan Edison Co.,* 330 NLRB 107 (1999); *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105–1106 (1991) (and cases cited therein). Thus, upon informing the Unions of its confidentiality concerns, the Respondent had an obligation to come forward with an offer of accommodation.

Our dissenting colleague would find that the Respondent satisfied its legal obligations under Section 8(a)(5) of the Act by simply asserting its confidentiality concerns about the location of the cameras. We disagree.

First, our colleague's position is clearly contrary to the Board precedent cited above. In effect, our colleague would reverse that precedent and shift any burden to seek an accommodation from the Respondent to the Unions. Contrary to our colleague, we adhere to precedent.

Second, the Unions' information request was not limited to the location of the cameras. As indicated above, the Unions sought "all information" concerning existing hidden cameras. Such information could include a variety of information other than location, such as whether any cameras were currently being used, how many such cameras were being used, the types of cameras involved, etc.

Our colleague acknowledges that the Unions' request was not limited to information about location, but faults the Unions for failing to say what other information they sought and argues that the Respondent's reply was sufficient "to put the ball back in the Unions' court." Here again, however, our colleague turns Board law on its head. "It is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

Here, the Respondent did neither. Notwithstanding that the Unions requested "all information" concerning existing hidden cameras, the Respondent's only answer was to deny information about the cameras' location. It provided no information at all about existing hidden cameras and it sought no clarification about what other kind of information the Unions were seeking. Contrary to our colleague, therefore, we find that the Respondent's response was insufficient.

Accordingly, we affirm the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act and adopt his recommended Order.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, National Steel Corporation, Granite City, Illinois, its officers, agents, successors, and assigns shall take the action set forth in the Order.

CHAIRMAN HURTGEN, dissenting.

I do not agree that the Respondent violated Section 8(a)(5). My colleagues find that the Respondent refused to bargain about surveillance cameras. I disagree. Since 1987, the Respondent has had a system of hidden surveillance cameras. On January 5, 2000, Local 67 President Donald Ogle told the Respondent that it should talk to the Union before it installed additional cameras. There is no evidence the Respondent thereafter installed additional cameras. Thus, there has been no refusal to bargain.

My colleagues also find that the Respondent unlawfully refused to supply information about the cameras. Again, I disagree. The system was designed to assist the Respondent in the investigation of suspected theft, vandalism, and other types of misconduct. The Unions made a nonspecific request for "all information" concerning such cameras. The Respondent replied that the disclosure of the location of the hidden cameras would defeat their purpose.

My colleagues find that this reply was unlawful. In my view, it was an appropriate response. The Respondent simply noted the obvious—that disclosure of the location of the hidden cameras would defeat their purpose. The ball was then back in the Unions' court. If the Unions had a way to reconcile their desire for the information and the Respondent's legitimate interests, they could have suggested same. They did not do so. In these circumstances, I would not find that the Respondent violated the Act.

[5] In adopting the judge's order requiring the Respondent to bargain with the Unions for an agreement that accommodates the Unions' need for information regarding the location of hidden cameras and the Respondent's confidentiality concerns as to that subject matter, we do not now decide the particular content of that bargaining except to direct the parties to thoroughly explore all reasonable alternatives to direct disclosure of the location of existing hidden surveillance cameras. "The Board's cumulative experience has shown that 'there should be, and almost always is, a way that the parties can effectively bargain' for an accommodation that will satisfy both the union's needs and the employer's protective concerns." *Metropolitan Edison Co.,* 330 NLRB 107, 109 (1999) (citation omitted).

I recognize that the Unions' request was not confined to information concerning location. However, the Unions failed to say what other information they sought. I also recognize that an employer cannot simply fail to reply to a request, even if it is nonspecific. However, the Respondent *did* reply. It made the valid point that information concerning location would jeopardize its program. Once again, the response put the ball back in the Unions' court. If the Unions wanted information other than location, they could have asked for same. They did not do so. Accordingly, the Respondent did not violate the Act.[1]

My colleagues rely upon the following proposition:

> It is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information.

Although the instant request was "ambiguous and overbroad," that was not the real root of the problem. The real root of the problem was the nonspecific nature of the request. The Respondent was left to guess what the Unions had in mind, and the Respondent reasonably inferred that the Unions wanted to know locations. The Respondent's reply contained the obvious point (not disputed by my colleagues) that disclosure of the locations would defeat the purpose of the cameras.

My colleagues also cite cases for the proposition that an employer "must offer to accommodate" its concerns and the Unions' interests. It should be noted that, under this view, the employer need not offer a specific accommodation. The employer simply has to offer to accommodate. Although the Respondent did not expressly make such an offer, it did not refuse to do so, and the Unions did not seek an accommodation. In these circumstances, I would not find a violation based on the hypertechnical view that the Respondent should have expressly recited its willingness to bargain about an accommodation.

Kathy J. Talbott-Schehl, Esq., for the General Counsel.
Jill K. Luft, Esq. (Greensfelder, Hemker & Gale, P.C.), of St. Louis, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in St. Louis, Missouri, on September 18, 2000. The charges were filed on March 6, 2000, and the complaint was issued May 31, 2000.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, manufactures steel at its facility in Granite City, Illinois, where it annually sells and ships goods valued in excess of $50,000 to points outside of the State of Illinois. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions, United Steelworkers of America, Locals 67 and 30, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) in refusing to bargain with the Charging Party Unions about its use of hidden surveillance cameras and in failing to provide the Unions with information regarding such cameras.

Respondent's Granite City Division produces steel coils and employs approximately 3000 employees. These employees are represented by 10 different United Steelworkers (USWA) local unions. Four of these locals, Nos. 16, 30, 67, and 68 represent production and maintenance employees. Among the other locals, Local 9325 represents office and technical employees and Local 4063 represents the plant guards. Respondent has seven different collective-bargaining agreements with its Unions. One local agreement covers the four production and maintenance unions. Respondent is also party to a contract with the USWA International Union covering all its divisions, referred to as a settlement agreement.

Within Respondent's human resources division is an office responsible for security and fire protection, headed by Marvin Owca. This office uses over 100 video cameras, that are in plain view to monitor areas of the Granite City plant. Additionally, on occasion, it has employed the use of hidden video cameras. None of the unions at the plant objected to the use of hidden video cameras, asked for bargaining regarding the use of such cameras or made an information request regarding the use of hidden cameras until January 5, 2000.

On January 5, at a meeting of a steering committee, comprised of company and union officials, Local 67 President Donald Ogle presented management with a copy of the Board's decision in *Colgate-Palmolive Co.,* 323 NLRB 515 (1997), and asked for information regarding all hidden surveillance cameras. He also stated that before additional cameras are installed, management needed to talk to "the Union."[1] Respondent's human resources director, Byron Heape, said that the issue was inappropriate for the steering committee since it had

[1] In view of my conclusion, I do not reach the remedial issue discussed in fn. 1 of the majority opinion.

[1] Ogle's interest in hidden surveillance cameras arose from the discipline given to a member of his local who was caught by such a hidden camera in supervisor's office using the telephone for extended periods of time. This incident will be discussed more fully with regard to the recitation of Respondent's past practices with regard to hidden cameras.

not been discussed at lower levels and suggested that the matter be referred to the Company's labor relations staff; Ogle agreed.

Ogle and representatives of Local Unions 16, 30, 68, 4063, and 9325 also sent a letter to management on January 10, 2000. The letter stated that the Board had determined that the use of hidden surveillance cameras was a mandatory subject of bargaining and that "the Union" had not waived its right to bargain over the subject. The letter also asked for all information concerning any existing surveillance cameras "that our members are subjected to that exist in any and all areas and locations of Granite City, National Steel property."

Joseph Costanzo, Respondent's employee relations manager, replied on February 28, 2000, concluding that National Steel did not believe that "the Union" is entitled to this information. Costanzo cited a "consistent and long-standing practice of using surveillance when there is a reasonable suspicion of wrongdoing and in areas where employees should have no expectation of privacy." He also noted that "the Union" had never challenged this practice and had previously requested that its members install such equipment. Costanzo also stated that disclosing the location of the equipment would defeat the purpose of utilizing it. Locals 30 and 67 responded to this letter by filing the charges in the instant case.

A. Respondent's use of Hidden Surveillance Cameras Prior to January 5, 2000

Respondent has periodically used hidden surveillance cameras to investigate specific situations in which it suspected theft, vandalism, or other instances of wrongdoing. The first instance that Owca recalls was the installation of a hidden camera in the Basic Oxygen Furnace Warehouse in 1987, to catch an individual who was stealing copper. A union electrician assisted in the installation of the camera. The camera remained in place for about 6 months. According to Owca, the thefts stopped because employees became aware of the camera. The thief or thieves were never apprehended.

In June 1996, Respondent installed another hidden camera to monitor equipment in the facility's South Power Plant, from which copper was being stolen. A camera was used for 2 weeks and assisted in the apprehension of a trespasser, who had been taking the copper from the machinery.

In 1998, Respondent installed a hidden camera in an effort to catch an individual who was pulling an electrical switch that shut down the cold strip production line. The camera was used for 1 month. Although an individual was observed pulling the switch, nobody was ever apprehended.

Again in 1998, a camera was used to try to catch someone who was greasing the foot and hand rails of railroad cars in the cold strip area. The camera monitored the area for 1 or 2 months; nobody was apprehended. In September 1998, USWA Local 68, which represents Respondent's electricians, filed a grievance over the installation and removal of the hidden video camera by management, rather than by bargaining unit employees.

The same year a hidden camera was used again in the Basic Oxygen Furnace Warehouse to investigate the theft of copper briquettes. The camera was used for 2–3 weeks and revealed a union employee, Mark Hale, stealing the material. This employee was terminated by Respondent. USWA Local 16 initially grieved Hale's termination, but then withdrew the grievance. In preparation for the grievance, Local 16 officials asked to see the videotape and thus were made aware that Hale had been observed by a hidden surveillance camera. Local 68 filed another grievance over the installation and removal of the camera by Security Chief Owca, rather than by bargaining unit electricians.

In March 1999, a hidden camera was installed behind the glass of the office door of a supervisor, which was being vandalized. The camera was used for 1 or 2 months. An individual was caught on camera trying to break into the office, but he could not be identified. The identity of the vandal or vandals was never determined.

At about the same time, Respondent installed a camera in a file cabinet to catch a person who was using Process Manager Mike Edgar's office at night when Edgar was not at work.[2] After some weeks, Local 67 member Ronnie Williams was identified as the person using Edgar's office. Further investigation disclosed that Williams was making extensive use of Edgar's telephone to place long-distance telephone calls. Respondent discharged Williams and the Union grieved his termination. Pursuant to the parties' collective-bargaining agreement, an arbitrator reinstated Williams to his job with no loss of seniority. However, he declined to award Williams backpay for the time he was off of work.

Local 67 President Donald Ogle became aware of Respondent's use of hidden surveillance cameras as the result of the discharge of Ronnie Williams. While preparing for the arbitration of the Williams' grievance, Ogle became aware of the Board's *Colgate-Palmolive* decision. He asked the arbitrator not to consider the evidence from the video camera. The arbitrator found that the Board's decision did not warrant the exclusion of the videotaped evidence from consideration.

B. Discussion of Hidden Surveillance Cameras During Contract Negotiations

During contract negotiations in June 1999, Michael Hargrave, president of USWA Local 9325, which represents office and technical employees, asked Respondent's attorney if it would cease using all video and recording devices used for surveillance. The attorney, Lydia Kachigian, replied that Respondent would give Local 9325 the benefit of any agreement reached with other USWA locals on this issue, but that the company retained all its rights on this matter. There is no evidence that the issue of hidden surveillance cameras was discussed during contract negotiations between Respondent and the production locals in 1999.[3]

[2] Respondent had installed the camera for a period of time in 1998 and then discontinued its use.

[3] The General Counsel's brief recites that the most recent local contract between the production and maintenance local unions and Respondent, as well as the most recent "settlement agreement" between Respondent and the USWA International Union run from August 1, 1999, through July 31, 2004. The record herein contains and refers only to prior contracts which expired by their terms on August 1, 1999. Since, there appears to be no issue about this matter, I assume the representation by the General Counsel is accurate.

Analysis

The General Counsel contends, and I agree, that the Board's decision in *Colgate-Palmolive* is dispositive of the instant case. In *Colgate,* the employer had placed hidden surveillance cameras in a restroom and exercise facility, apparently to catch suspected thieves. The Board found the use of such cameras was a mandatory subject bargaining since it was plainly germane to the working environment and not among those managerial decisions which lie at the core of entrepreneurial control. The Board noted that many other techniques of investigating employee wrongdoing had previously been found to be mandatory subjects of bargaining, such as polygraph testing and drug/alcohol testing.

While Respondent submits that its situation is distinguishable from *Colgate-Palmolive*, I conclude that it is not distinguishable in any material way. Although Respondent has not utilized hidden surveillance cameras in areas such as restrooms, there is no reason for the Union to conclude that it might not do so if it had cause to believe that violations of the law or company work rules were occurring in such areas. It is clearly relevant to the working environment of the Union's members if they are under surveillance by hidden cameras even in their normal work areas. The Union obviously has an interest in preventing indiscriminate use of such cameras.

National Steel also contends that requiring it to bargain is unduly burdensome in view of the fact that there are 10 different local unions at its Granite City plant. Obviously, there are many mandatory subjects of bargaining which require Respondent to negotiate with all of its unions. There is no authority for the proposition that an employer is excused from its obligation to bargain over such subjects by virtue of the number of labor organizations with which it must negotiate.

Thirdly, Respondent, like *Colgate-Palmolive*, contends that it is excused from an obligation to bargain by the adverse impact bargaining would have on its ability to protect its property and employees. As noted in footnote 10 of the Board's *Colgate-Palmolive* decision, "the placing of cameras, and the extent to which they will be secret or hidden, if at all, is a proper subject of negotiations between Respondent and the Union . . . bargaining about hidden cameras can embrace a host of matters other than mere location. And even as to location, mutual accommodations can and should be negotiated . . . ."

Bargaining need not necessarily defeat the purpose of using hidden surveillance cameras. For example, Respondent could bargain for a mutually satisfactory confidentiality agreement or protective order, that would limit the dissemination of information about the cameras. Moreover, Respondent could bargain over the specificity of the information to be divulged, possibly giving only a very general description of where the camera will be placed and the area under surveillance. Finally, Respondent's past history in using hidden surveillance cameras indicates that while employees' discovery of the camera on several occasions prevented the apprehension of the wrongdoer, in several situations, it stopped the thefts or other conduct which endangered Respondent's employees and their property.[4]

The Union(s) Requested Bargaining

At page 14 of its brief, Respondent states that at no time during the January 5, 2000 steering committee meeting, or at any other time, did any of the union representatives request that National Steel bargain about the use of hidden cameras. A bargaining request need not be made in so many words if it is implicit from the language used and the context in which it is made, *Legal Aid Bureau,* 319 NLRB 159 fn. 2 (1995); *Cottage Bakers,* 120 NLRB 841 (1958). I conclude that the Union President Ogle's statement that Respondent needed to talk to the Union before installing additional hidden surveillance cameras, following his presentation to management of the *Colgate-Palmolive* decision constitutes a bargaining request.

The Union(s) has (have) not Waived its (their) Right to Bargain

Respondent further contends that the Union(s) waived their right to bargain over the use of hidden surveillance cameras by virtue of their knowledge of prior use of such cameras by Respondent and their failure to request bargaining on these occasions. A similar argument was made by the employer in *Colgate-Palmolive*, which was rejected by the Board.

The Board generally does not find a waiver of the statutory right to bargain without a showing that the matter at issue was fully discussed and consciously explored and that the Union unmistakably waived its interest in the matter, *Rockwell International Corp.,* 260 NLRB 1346, 1347 (1982); *Midwest Power Systems,* 323 NLRB 404, 407 (1997). Respondent has made no such showing in the instant case. As in *Colgate-Palmolive,* the Unions herein learned about the past use of hidden surveillance cameras after they had been installed and then dismantled. There is no showing that Respondent ever provided the Unions advance notice that it intended to use such cameras. The Union's failure to request bargaining on prior occasions does not therefore constitute a waiver of its (their) right to bargain over the future installation of hidden surveillance cameras.[5]

[4] I see no merit in Respondent's argument that its use of hidden surveillance cameras often placed under surveillance persons other than bargaining unit employees and indeed led to apprehension of such individuals for theft in several circumstances. It is merely fortuitous that the wrongdoer in such situations was not a bargaining unit employee or that the camera did not capture a bargaining unit employee engaged in a violation of company rules other than that for which the camera was installed. Thus, a camera installed in a warehouse to capture a thief may record an employee sleeping on the job or absent from his workstation without authorization.

[5] I regard Respondent's reliance on its history or past practice of using hidden surveillance cameras to be part of its contention that the Unions waived their right to bargain over this issue, rather than a separate argument. An employer's past practices and a union's conscious acquiescence in such practices is a common way of establishing a waiver of bargaining rights. In this case, I find no such conscious waiver. I would note that Respondent's past practice consists of several ad hoc decisions to use hidden cameras, rather than a general policy of which the Unions were apprised. Moreover, the instances in which hidden surveillance cameras have been used all occurred since 1998, except for the 1987 surveillance of the Basic Oxygen Furnace Warehouse and the 1996 utilization of the camera in the South Power Plant. Thus, Respondent's recurring utilization of hidden surveillance camera is a relatively recent phenomena.

Respondent Violated the Act in not Providing the Union(s) with the Information it (they)Requested

It is well settled that an employer, on request, must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. The Board uses a broad, discovery-type standard in determining relevance. Information about terms and conditions of employees actually represented by a union is presumptively relevant and necessary and must be produced, *Reiss Viking,* 312 NLRB 622, 625 (1993). It follows from the Board's conclusion in *Colgate-Palmolive,* that an employer's use of hidden surveillance cameras is germane to the working environment, that information regarding these cameras is relevant to the Union's discharge of its statutory duties and responsibilities.

A union's interest in relevant and necessary information, however, does not always predominate over other legitimate interests. As explained by the Supreme Court in *Detroit Edison v. NLRB,* 440 U.S. 301, 314 (1979), "a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested." Thus, in dealing with union requests for relevant but assertedly confidential information possessed by an employer, the Board is required to balance a union's need for the information against any "legitimate and substantial" confidentiality interest established by the employer.

However, an employer possessing requested information and refusing to disclose it on confidentiality grounds has a duty to seek an accommodation through the bargaining process. The employer must bargain towards an accommodation between the Union's need for the information and the employer's justified confidentiality concerns, *Pennsylvania Power Co.,* 301 NLRB 1104, 1105–1106 (1991).

In the instant case, there is no evidence as to whether Respondent had information concerning its use of existing hidden surveillance cameras because there is no evidence that Respondent has utilized such cameras since January 10, 2000. However, if it has done so or will do so, it should be ordered to disclose the requested information to the Union(s) conditionally. I conclude that Respondent has established a legitimate confidentiality concern with regard to some of the requested information, such as the precise location that is under surveillance, *Lasher Service Corp.,* 332 NLRB 834 (2000). The disclosure will therefore be subject to the parties' bargaining in good faith to a mutually satisfactory confidentiality agreement, protective order, or other appropriate procedure, *Exxon Co. USA,* 321 NLRB 896 (1996).

CONCLUSIONS OF LAW

1. Respondent's use of hidden surveillance cameras is a mandatory subject of bargaining.

2. By refusing to notify and bargain with the Union prior to the installation of hidden surveillance cameras, Respondent has violated Section 8(a)(1) and (5) of the Act.

3. Respondent violated Section 8(a)(1) and (5) by failing and refusing to bargain with the Union for a mutually satisfactory confidentiality agreement, protective order, or other appropriate procedure that balances its legitimate confidentiality concerns with the Union's need for the information it requested regarding existing hidden surveillance cameras.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, National Steel Corporation, Granite City, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union(s) with respect to the installation and use of hidden surveillance cameras.

(b) Failing to comply with information requests regarding hidden surveillance cameras without bargaining for a mutually satisfactory confidentiality agreement, protective order or other procedure that balances Respondent's confidentiality concerns with the Union(s) need for the information requested.

(c) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union(s) with respect to the installation and use of hidden surveillance cameras.

(b) Bargain collectively with the Union(s) for a mutually satisfactory confidentiality agreement, protective order or other procedure that balances Respondent's confidentiality concerns with the Union(s)'s need for information regarding hidden surveillance cameras.

(c) Provide the Union(s) with the information requested regarding hidden surveillance cameras in accordance with whatever confidentiality agreement, protective order etc., upon which Respondent and the Union(s) agree.

(d) Within 14 days after service by the Region, post at its Granite City, Illinois facility copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 5, 2000.

(e) Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local Unions 30 and 67 of the United Steelworkers of America, AFL–CIO over the installation and use of hidden surveillance cameras within our facility.

WE WILL NOT refuse to provide information that is requested by the Union(s) that is necessary and relevant to their duties as collective-bargaining representatives.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union(s) over the installation and use of hidden surveillance cameras within our facility.

WE WILL, on request, provide information that is requested by the Union(s) that is necessary and relevant to their duties as collective-bargaining representatives. In the event that we have legitimate confidentiality concerns, we will collectively bargain with the Union(s) for a mutually satisfactory confidentiality agreement, protective order or similar procedure that will balance the Union(s)'s need for the information and our confidentiality concerns.

NATIONAL STEEL CORPORATION